

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4048 OF 2020

Mathurabai w/o Dnyanoba Gatkai

Died through her Legal heir

Ramkrishna Dnyanoba Gatkai

... Petitioner

Versus

The State of Maharashtra and others

... Respondents

....

Mr. Abhijit S. More, Advocate for petitioer

Mr. S. P. Tiwari, AGP for respondent Nos. 1 and 3

Mr. S. D. Kaldade, Advocate for respondent No.2

....

CORAM : R. G. AVACHAT, J.

DATED : 11th FEBRUARY, 2021

PER COURT :-

. Heard.

2. The challenge in this Writ Petition is to the judgment and order dated 22.08.2011 in LAR No.205/1998, passed by learned Civil Judge, Senior Division, Osmanabad, whereby land acquisition reference preferred by the petitioner has been dismissed on the ground that the applicant failed to adduce any oral as well as documentary evidence.

3. I have heard Mr. More, learned counsel appearing for the petitioner. Learned counsel would submit that the mother of the petitioner was poor agriculturists. Her properties came to be acquired

under the Land Acquisition Act. She has been paid inadequate compensation. The mother of the petitioner had, therefore, preferred reference for enhancement of compensation. The Advocate appearing on her behalf before the court did not inform the mother of the petitioner the progress of the matter. The same has caused grave injustice to petitioner. After having learnt about such order, the petitioner has moved the present Writ Petition.

4. According to the learned counsel, the petitioner would lead evidence in her LAR. The petitioner may be given an opportunity of hearing. LAR could not have disposed of by the court concerned observing the petitioners to have failed to adduce evidence. Learned counsel, therefore, urged for setting aside the impugned order.

5. Learned counsel for the petitioner relied on the judgments and orders passed by this court in following Writ Petitions:-

1) Writ Petition No.12795 of 2019 (Walmik s/o. Trimbak Tupe Vs. State of Maharashtra and anr.) and other connected petitions decided on 17.01.2020);

2) Writ Petition No.3572 of 2020 (Narshing Vithoba Jagtap Vs. State of Maharashtra and ors.) and other connected petitions decided on 04.03.2020.

6. Learned AGP would, on the other hand, submit that the petitioner was grossly negligent. There is delay of over 6-7 years to approach this Court. If the Court is pleased to allow the petition, the petitioner may not be held to be entitled for interest for the period from the date of dismissal of LAR, to the date of filing of this Writ Petition.

7. In the case of **Narayan Deorao Gore (died) through L.Rs. Vs. State of Maharashtra, 2011(3)Mh.L.J. 592**, this Court has held that the LARs should be decided on merits. The claimant must be given sufficient and full opportunity to put forth his case. The claim need not be discarded on technicality of not adducing documentary evidence.

8. In the similar facts and circumstances of the cases referred to herein above (WP 12795 of 2019 and ors.), this Court allowed those petitions setting aside the orders impugned therein. Similar treatment is, therefore, required to be given to the present petition. The petitioner is poor agriculturists. The petitioner, however, would not be entitled for interest on the amount enhanced, if any, in the LAR from the dates of dismissal of the LAR to the date of filing of this Writ Petition.

9. In view of the above, the Writ Petition is allowed in the following terms:-

- (i) The order impugned in this Writ Petition is set aside. LAR No.205/1998 is restored to the file of the learned Civil Judge, Senior Division, Osmanabad. The petitioner shall appear before the Court concerned on 05.03.2021.
- (ii) The petitioner shall tender his affidavit in lieu of examination-in-chief before the L.A.R. Court concerned, on or before 20.03.2021.
- (iii) The L.A.R. Court shall then decide said proceedings at the earliest and preferably, on or before 31.12.2021.
- (iv) The petitioner shall not be entitled for interest component, in the event of enhancement of compensation, from the date on which the LAR was dismissed, to the date of filing of this Writ Petition.
- (v) In the event this petitioner unnecessarily delay the proceedings and do not lead evidence as directed, the L.A.R. Court would be at liberty to pass appropriate orders.

[R. G. AVACHAT, J.]

SMS